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Guy M. Hicks
General CounselOFFICE OF THE
EXECUTIVE SECRETARY
March 13, 2000

Fixed Copy

VIA HAND DELIVERYDavid Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Petition by ICG TELECOM GROUP, INC. for Arbitration of an Interconnection Agreement with BELLSOUTH TELECOMMUNICATIONS, INC. pursuant to Section 252(b) of the Telecommunications Act of 1996*

Docket No. 99-00377

Dear Mr. Waddell:

BellSouth Telecommunications, Inc. ("BellSouth") and ICG Telecom Group ("ICG") are pleased to report that we have reached agreement on two of the outstanding issues in the arbitration currently pending before the Authority. The parties have successfully resolved issues in the two areas listed below:

1. Inter-Carrier Compensation for ISP Traffic – The resolution of this topic covers Issue 1 in the arbitration. The parties have agreed upon an inter-carrier compensation mechanism for ISP traffic on a going forward basis.
2. Performance Measures and Remedies – The resolution of this issue covers Issue 5 and Issues 19-26 in the arbitration. The parties have agreed upon the terms of a plan with regard to performance measures and remedies addressing deficiencies related thereto.

Attached is the contract language to which the parties have agreed that will be incorporated into the new interconnection agreement which BellSouth and ICG will submit to the Authority for approval.

With the resolution of these issues, the following issues remain for Authority decision in this arbitration:

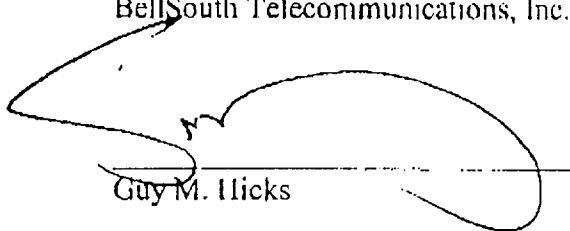
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March 13, 2000
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Issue 4 – Enhanced Extended Loops (“EELs”)
Issue 11 – Binding Forecast

ICG has authorized me to file this letter on its behalf. Thank you for your attention to these issues.

BellSouth Telecommunications, Inc.

A handwritten signature in black ink, appearing to read "Guy M. Hicks", is written over a horizontal line. The signature is stylized with a large loop at the end and a small mark above the "y".

cc: Richard Collier (via fax)
Henry Walker

ATTACHMENT A

2. Interconnection Compensation

6.1 Compensation for Call Transportation and Termination for Local Traffic and Inter-Carrier Compensation for ISP-Bound Traffic

6.1.1 Local Traffic is defined as any telephone call that originates in one exchange and terminates in either the same exchange, or a corresponding Extended Area Service ("EAS") exchange.

6.1.2 The Parties will compensate each other on a mutual and reciprocal basis for the transport and termination of Local Traffic at the following rates:

1/1/00 - 12/31/00	\$.00200 per MOU
1/1/01 - 12/31/01	\$.00175 per MOU
1/1/02 - 12/31/02	\$.00150 per MOU

The Parties recognize and agree that this Section will take effect January 1, 2000 and that they negotiated these annual rates together as a complete rate structure to apply over the full three-year term of this Agreement and that neither party would have agreed to accept a single annual rate in any single year.

6.1.3 The Parties have been unable to agree upon whether, pursuant to the FCC's February 26, 1999 Declaratory Ruling in Docket CC 96-98, dial up calls to Internet Service Providers or Information Service Providers ("ISPs") should be considered Local Traffic for purposes of this Agreement. Dial-up Calls are defined as calls to an ISP that are dialed by using a local dialing pattern (7 or 10 digits) by the calling party (hereinafter referred to as "ISP-bound traffic"). However, without prejudice to either Party's position concerning the nature of ISP-bound traffic, the Parties agree for purposes of this Agreement only to compensate each other at the same per minute of use rates set forth in Paragraph 6.1.2. for ISP-bound traffic. It is expressly understood and agreed that this inter-carrier compensation mechanism for ISP-bound traffic is being established: (1) in consideration for a waiver and release by each party for any and all claims for reciprocal compensation for ISP-bound traffic exchanged between the parties prior to January 1, 2000, which is hereby given; and (2) subject to the terms and conditions in section 6.1.4.

6.1.3.1 The Parties recognize and agree that the FCC, courts of competent jurisdiction, or state commissions with jurisdiction over the Parties will issue subsequent decisions on ISP-bound traffic ("Subsequent Decisions"). Notwithstanding any provision in this Agreement to the contrary, the inter-carrier compensation mechanism established in section 6.1.3 shall continue at the rates set forth in

section 6.1.2 for the full term of this Agreement without regard to such Subsequent Decisions, except as provided for in section 6.1.3.2.

- 6.1.3.2 To the extent such Subsequent Decisions render the inter-carrier compensation mechanism for ISP-bound traffic set forth in section 6.1.3 in violation of applicable federal or state law, the Parties agree to amend this Agreement within thirty (30) days of the effective date of any such Subsequent Decision to conform the inter-carrier compensation mechanism set forth in section 6.1.3 with such Subsequent Decision. In the event of such an amendment, there will no true-up for compensation paid prior to the amendment.
- 6.1.4 The Parties recognize and agree that the compensation for the transport and termination of Local Traffic set forth in section 6.1.2 and the inter-carrier compensation mechanism for ISP-bound traffic set forth in section 6.1.3 are intended to allow each Party to recover costs associated with such traffic. The Parties recognize and agree that such compensation will not be billed and shall not be paid for a call placed by an end user customer, or placed on behalf of an end user customer, to establish or maintain a network connection if: (1) such call is not recognized by industry practice to constitute traffic (voice or data) which results from a telephone call; (2) the end user customer does not specify between or among the points of the call and does not choose the information of that call; and (3) the primary purpose of that call is to generate the payment of reciprocal compensation as a result of establishing or maintaining the network connection.
- 6.1.5 If ICG utilizes a switch outside the LATA and BellSouth chooses to purchase dedicated or common (shared) transport from ICG for transport and termination of BellSouth originated traffic, BellSouth will pay ICG no more than the airline miles between the V & H coordinates of the Point of Interface within the LATA where ICG receives the BellSouth-originated traffic and the V & H coordinates of the BellSouth Exchange Rate Center Area that the ICG terminating NPA/NXX is associated in the same LATA. For these situations, BellSouth will compensate ICG at either dedicated or common (shared) transport rates specified in Exhibit A and based upon the functions provided by ICG as defined in this Attachment.
- 6.1.6 Neither Party shall represent access services traffic (e.g. FGA, FGB, etc.) as Local Traffic for purposes of payment of reciprocal compensation.

ATTACHMENT B

Service Performance Measurements And Enforcement Mechanisms

1. Scope

This Attachment includes Enforcement Measurements with corresponding Enforcement Mechanisms applicable to this Agreement.

2. Reporting

2.1 In providing services pursuant to this Agreement, BellSouth will report its performance to ICG in accordance with BellSouth's Service Quality Measurements, which are contained in this Attachment as Exhibit A and in accordance with BellSouth's Enforcement Measurements, which are contained in this Attachment as Exhibit B.

2.2 BellSouth will make performance reports available to ICG on a monthly basis. The reports will contain information collected in each performance category and will be available to ICG through some electronic medium to be determined by BellSouth. BellSouth will also provide electronic access to the raw data underlying the performance measurements. Within thirty (30) days of execution of this Agreement, BellSouth will provide a detailed session of instruction to ICG regarding access to the reports and to the raw data as well as the nature of the format of the data provided.

3. Modifications to Measurements

3.1 Service Quality Measurements

3.1.1 BellSouth will update the Service Quality Measurements contained in Exhibit A of this Attachment each calendar quarter. BellSouth will not delete any Service Quality Measurement without prior written consent of ICG. ICG may provide input to BellSouth regarding any suggested additions, deletions or other modifications to the Service Quality Measurements. BellSouth will provide notice of all changes to the Service Quality Measurements via BellSouth's internet website.

3.1.2 Notwithstanding the foregoing, BellSouth may, from time to time, be ordered by a regulatory or judicial body to modify or amend the Service Quality Measurements. BellSouth will make all such changes to the Service Quality Measurements pursuant to Section

16.5 of the General Terms and Conditions of this Agreement, incorporated herein by reference. Nothing herein shall preclude either party from participating in any proceeding involving BellSouth's Service Quality Measurements or from advocating that those Measurements be modified from those contained herein.

- 3.1.3 Notwithstanding any other provision of this Agreement, in the event a dispute arises regarding the modification or amendment of the Service Quality Measurements, the parties will refer the dispute to the Commission.

3.2 Enforcement Measurements and Statistical Test

- 3.2.1 In order for BellSouth to accurately administer the Enforcement Measurements contained in Exhibit B of this Attachment, the Enforcement Measurements shall be modified or amended only if BellSouth determines such modification or amendment is necessary. However, BellSouth will not delete any Enforcement Measurement without prior written consent of ICG. BellSouth will notify ICG of any such modification or amendment to the Enforcement Measurements via BellSouth's internet website.
- 3.2.2 Notwithstanding the foregoing, BellSouth may, from time to time, be ordered by a regulatory or judicial body to modify or amend the Enforcement Measurements and/or Statistical Test. BellSouth will make all such changes to the Enforcement Measurements and/or Statistical Test pursuant to Section 16.5 of the General Terms and Conditions of this Agreement, incorporated herein by reference. Nothing herein shall preclude either party from participating in any proceeding involving the Enforcement Measurements and/or Statistical Test or from advocating that those Measurements or Test be modified from those contained herein.
- 3.2.3 Notwithstanding any other provision of this Agreement, in the event a dispute arises regarding the modification or amendment of the Enforcement Measurements and/or Statistical Test, the parties will refer the dispute to the Commission.

4. Enforcement Mechanisms

4.1 Purpose

This section establishes meaningful and significant enforcement mechanisms voluntarily provided by BellSouth to verify and maintain compliance between BellSouth and ICG's operations as well as to maintain access to Operational Support System (OSS) functions. This section provides the terms and conditions for such self-effectuating enforcement mechanisms. To the extent the FCC issues

an order authorizing BellSouth to provide interLATA telecommunications service under section 271 of the Act that contains enforcement mechanisms that deviate from those contained herein, BellSouth and ICG agree to amend this Attachment to conform to the FCC's order.

4.2 Effective Date

Tier-1 Enforcement Mechanisms shall become effective in all BellSouth states upon an effective FCC order, which has not been stayed, authorizing BellSouth to provide interLATA telecommunications service under section 271 of the Act within any given state. Tier-2 and Tier-3 Enforcement Mechanisms set forth in this section shall only become effective upon an effective FCC order, which has not been stayed, authorizing BellSouth to provide interLATA telecommunications services under section 271 of the Act within a particular state and shall only apply to BellSouth's performance in any state in which the FCC has granted BellSouth interLATA authority.

4.3 Definitions

- 4.3.1 Enforcement Measurement Elements means the performance measurements set forth in Exhibit B, attached hereto and incorporated herein by this reference.
- 4.3.2 Enforcement Measurement Benchmark means a competitive level of performance negotiated by BellSouth used to compare the performance of BellSouth and ICG where no analogous process, product or service is feasible. See Exhibit B.
- 4.3.3 Enforcement Measurement Compliance means comparing performance levels provided to BellSouth retail customers with performance levels provided by BellSouth to the CLEC customer, as set forth in Exhibit C, attached hereto and incorporated herein by this reference.
- 4.3.4 Test Statistic and Balancing Critical Value is the means by which enforcement will be determined using statistically valid equations. See Exhibit C.
- 4.3.5 Cell is the point (below the wire center level) at which like-to-like comparisons are made. For example, all BellSouth retail POTS services, for residential customers, requiring a dispatch in a particular wire center, at a particular point in time will be compared directly to ICG resold services for residential customers, requiring a dispatch, in the same wire center, at a particular point in time. When determining compliance, these cells can have a positive or negative value. See Exhibit C.

- 4.3.6 Affected Volume means that proportion of the total ICG volume or CLEC Aggregate volume for which remedies will be paid.
- 4.3.7 Parity Gap refers to the incremental departure from a compliant-level of service. (See Exhibit D). This is also referred to as "diff" in the Statistical paper (See Exhibit C).
- 4.3.8 Tier-1 Enforcement Mechanisms means self-executing liquidated damages paid directly to ICG when BellSouth delivers non-compliant performance of any one of the Enforcement Measurement Elements for any month as calculated by BellSouth.
- 4.3.9 Tier-2 Enforcement Mechanisms means Assessments paid directly to a state Public Service Commission ("Commission") or its designee. Tier 2 Enforcement Mechanisms are triggered by three consecutive monthly failures in a quarter in which BellSouth performance is out of compliance or does not meet the benchmarks for the aggregate of all CLEC data as calculated by BellSouth for a particular Enforcement Measurement Element.
- 4.3.10 Tier-3 Enforcement Mechanisms means the voluntary suspension of additional marketing and sales of long distance services triggered by excessive repeat failures of those specific submeasures as defined in Exhibit D attached hereto and incorporated herein by this reference.

4.4 Application

- 4.4.1 The application of the Tier-1, Tier-2, and Tier-3 Enforcement Mechanisms does not foreclose other non-contractual legal and regulatory claims and remedies available to ICG.
- 4.4.2 Proof of damages resulting from BellSouth's failure to maintain Enforcement Measurement Compliance would be difficult to ascertain and, therefore, liquidated damages are a reasonable approximation of any contractual damage. Liquidated damages under this provision are not intended to be a penalty.

4.5 Methodology

- 4.5.1 Tier-1 Enforcement Mechanisms will be triggered by BellSouth's failure to achieve Enforcement Measurement Compliance or Enforcement Measurement Benchmarks for the State for a given Enforcement Measurement Element in a given month based upon a test statistic and

balancing critical value calculated by BellSouth utilizing BellSouth generated data. The method of calculation is attached hereto as Exhibit D and incorporated herein by this reference.

4.5.1.1 Tier-1 Enforcement Mechanisms apply on a per transaction basis for each negative cell and will escalate based upon the number of consecutive months that BellSouth has reported non-compliance.

4.5.1.2 Fee Schedule for Tier-1 Enforcement Mechanisms is shown in Table-1 attached hereto as Exhibit E and incorporated herein by this reference. Failures beyond Month 6 (as set forth in Table 1) will be subject to Month 6 fees.

4.5.2 Tier-2 Enforcement Mechanisms will be triggered by BellSouth's failure to achieve Enforcement Measurement Compliance or Enforcement Measurement Benchmarks for the State in a given calendar quarter based upon a statistically valid equation calculated by BellSouth utilizing BellSouth generated data. The method of calculation is attached hereto as Exhibit D and incorporated herein by reference.

4.5.2.1 Tier-2 Enforcement Mechanisms apply, for an aggregate of all CLEC data generated by BellSouth, on a per transaction basis for each negative cell for a particular Enforcement Measurement Element.

4.5.2.2 Fee Schedule for Total Quarterly Tier-2 Enforcement Mechanisms is shown in Table-2 attached hereto as Exhibit E and incorporated herein by this reference.

4.5.3 Tier-3 Enforcement Mechanisms will be triggered by BellSouth's failure to achieve Enforcement Measurement Compliance or Enforcement Measurement Benchmarks for a State in a given calendar quarter. The method of calculation for specified submeasures is identical to the method of calculation for Tier-2 Enforcement Mechanisms as described above. The specific submeasures which are the mechanism for triggering and removing a Tier-3 Enforcement Mechanisms are described in more detail in Exhibit D attached hereto and incorporated herein by this reference.

4.6 Payment of Tier-1 and Tier-2 Amounts

4.6.1 If BellSouth performance triggers an obligation to pay Tier-1 Enforcement Mechanisms to ICG or an obligation to remit Tier-2 Enforcement Mechanisms to the Commission, BellSouth shall make payment in the required amount on or before the thirtieth (30th) day following the due

date of the performance measurement report for the month in which the obligation arose.

- 4.6.2 For each day after the due date that BellSouth fails to pay ICG the required amount, BellSouth will pay interest to ICG at the maximum rate permitted by state law.
- 4.6.3 For each day after the due date that BellSouth fails to pay the Tier-2 Enforcement Mechanisms, BellSouth will pay the Commission an additional \$1,000 per day.
- 4.6.4 If ICG disputes the amount paid to ICG for Tier-1 Enforcement Mechanisms, ICG shall submit a written claim to BellSouth within sixty (60) days after the date of the performance measurement report for which the obligation arose. BellSouth shall investigate all claims and provide ICG written findings within thirty (30) days after receipt of the claim. If BellSouth determines ICG is owed additional amounts, BellSouth shall pay ICG such additional amounts within thirty (30) days after its findings along with interest paid at the maximum rate permitted by law.
- 4.6.5 At the end of each calendar year, BellSouth will have its independent auditing and accounting firm certify that the results of all Tier-1 and Tier-2 Enforcement Mechanisms were paid and accounted for in accordance with Generally Accepted Account Principles (GAAP).

4.7 Limitations of Liability

- 4.7.1 BellSouth will not be responsible for ICG acts or omissions that cause performance measures to be missed or fail, including but not limited to accumulation and submission of orders at unreasonable quantities or times or failure to submit accurate orders or inquiries. BellSouth shall provide ICG with reasonable notice of such acts or omissions and provide ICG any such supporting documentation.
- 4.7.2 BellSouth shall not be obligated for Tier-1, Tier-2 or Tier 3 Enforcement Mechanisms for non-compliance with a performance measure if such non-compliance was the result of an act or omission by ICG that is in bad faith.
- 4.7.3 BellSouth shall not be obligated to pay Tier-1 Enforcement Mechanisms or Tier-2 Enforcement Mechanism for non-compliance with a performance measurement if such non-compliance was the result of any of the following: a Force Majeure event as set forth in the General Terms and Conditions of this Agreement; an act or omission by ICG that is contrary to any of its obligations under its Interconnection Agreement with BellSouth; an act or omission by ICG that is contrary to any of its

obligations under the Act, Commission rule, or state law; an act or omission associated with third-party systems or equipment; or any occurrence that results from an incident reasonably related to the Y2K problem.

- 4.7.4 It is not the intent of the Parties that BellSouth be liable for both Tier-2 Enforcement Mechanisms and any other assessments or sanctions imposed by the Commission. ICG will not oppose any effort by BellSouth to set off Tier-2 Enforcement Mechanisms from any additional assessment imposed by the Commission.
- 4.7.5 Payment of any Tier-1 or Tier-2 Enforcement Mechanisms shall not be considered as an admission against interest or an admission of liability or culpability in any legal, regulatory or other proceeding relating to BellSouth's performance. The payment of any Tier-1 Enforcement Mechanisms to ICG shall release BellSouth for any liability associated with or related to the service performance measurement for the month for which the Enforcement Mechanisms was paid to ICG.
- 4.7.6 ICG acknowledges and argues that the Enforcement Mechanisms contained in this attachment have been provided by BellSouth on a completely voluntary basis in order to maintain compliance between BellSouth and ICG. Therefore, ICG may not use the existence of this section or any payments of any Tier-1 or Tier-2 Enforcement Mechanisms under this section as evidence that BellSouth has not complied with or has violated any state or federal law or regulation.

4.8 Enforcement Mechanism Caps

- 4.8.1 BellSouth's liability for the payment of Tier-1 and Tier-2 Enforcement Mechanisms shall be collectively capped at \$625M per year for the entire BellSouth region as set forth below.

AL - \$54M	MS - \$44M
FL - \$122M	NC - \$77M
GA - \$131M	SC - \$47M
KY - \$34M	TN - \$57M
LA - \$59M	
Regional Total - \$625M	

- 4.8.2 If BellSouth's liability for the payment of Tier-1 and Tier-2 Enforcement Mechanisms exceed the caps referenced in this attachment, ICG may commence a proceeding with the Commission to demonstrate why BellSouth should pay any amount in excess of the cap. ICG shall have the

burden of proof to demonstrate why, under the circumstances, BellSouth should have additional liability.

4.9 Dispute Resolution

- 4.9.1 Notwithstanding any other provision of this Agreement, any dispute regarding BellSouth's performance or obligations pursuant to this Attachment shall be resolved by the Commission.

EXHIBIT A

EXHIBIT B

EXHIBIT C

EXHIBIT D

EXHIBIT E